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7 Attorneys for Plaintiffs OSCAR CADENA-JUAREZ,
 8 a minor, FELIX CADENA-URQUIDEZ,
 9 and MARIA DEL RUBI JUAREZ-ALONSO

FILED

2007 JUN 11 PM 4:25

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY AS DEPUTY

10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 OSCAR CADENA-JUAREZ, a minor, by and)
 13 through his Guardian Ad Litem, ESTELA)
 14 GURROSQUIETA, FELIX CADENA-)
 15 URQUIDEZ, and MARIA DEL RUBI)
 16 JUAREZ-ALONSO)

17 Plaintiffs,)

18 v.)

19 UNITED STATES OF AMERICA,)

20 Defendant.)

Case No. **07 CV 1063 W****RBB**

COMPLAINT FOR DAMAGES:

1. Medical Malpractice;
2. Negligent Infliction of Emotional Distress

21 Plaintiffs OSCAR CADENA-JUAREZ, a minor, FELIX CADENA-URQUIDEZ, and MARIA
 22 DEL RUBI JUAREZ-ALONSO allege as follows:

23 1. This action arises under Federal Tort Claims Act, 28 U.S.C. Section 1346(b), 2671-80,
 24 as hereinafter more fully appears.

25 2. Plaintiff OSCAR CADENA-JUAREZ ("Oscar"), is minor, born on February 4, 2006,
 26 who, at relevant time herein alleged, resides with father, FELIX CADENA-URQUIDEZ, and his mother,
 27 MARIA DEL RUBI JUAREZ-ALONSO, in San Diego, California.

28 3. Plaintiff FELIX CADENA-URQUIDEZ ("Felix") is the father of Oscar and, at all
 relevant times, a resident of San Diego, California.

4. Plaintiff MARIA DEL RUBI JUAREZ-ALONSO ("Maria") is the mother of Oscar and,
 at all relevant time, a resident of San Diego, California.

COMPLAINT FOR DAMAGES

1
2 5. Plaintiffs are informed and believe and thereon allege that on or about June 11, 2007,
3 ESTELA GURROSQUIETA applied for appointment as Guardian Ad Litem of Plaintiff OSCAR
4 CADENA-JUAREZ.

5 6. Pursuant to 28 U.S.C. Section 2675(a), the claims set forth herein were presented to the
6 U.S. Department of Health and Human Services on December 1, 2006. The U.S. Department of Health
7 and Human Services denied the claims by failing to respond to them by June 1, 2007.

8 **COUNT ONE**

9 **(Medical Malpractice)**

10 7. On or about July 28, 2006, Felix and Maria brought their son Oscar to the Neighborhood
11 Healthcare clinic ("NH") for medical treatment related to fever symptoms that he was experiencing. NH
12 is a federally funded medical clinic in Escondido, California.

13 8. While attempting to care for Oscar, physicians and nurses applied a hot pack to Oscar's
14 right forearm in an effort to "raise" a vein from which they could draw blood. At this time, NH
15 physicians and nurses negligently treated and cared for Oscar by overheating the hot pack and leaving
16 it on Oscar's right forearm for an excessive period of time. As a proximate result of the negligence of
17 NH's physicians and nurses, Oscar suffered, among other things, scalding burn injuries to his right
18 forearm leaving a large scar. As a further proximate result of the negligence of NH's physicians and
19 nurses, Oscar further suffered great mental, physical and nervous pain and suffering, as well as general
20 damages. Finally, Oscar has incurred, and will incur in the future, medical bills related to care that he
21 has needed, and will need, to treat the injuries that he suffered as described herein.

22 **COUNT TWO**

23 **(Negligent Infliction of Emotional Distress)**

24 9. Plaintiff repeat and re-allege each and every allegation contained in paragraphs 1 through
25 8 as though set forth in full herein.

26 10. At all times herein, Felix and Maria were in close proximity to and witnessed NH's
27 physicians and nurses' negligent conduct, including, but not limited to, burning their son Oscar's right
28 forearm with the hot pack.

11. Because of the negligence of NH's physicians and nurses and as a proximate result thereof, Felix and Maria sustained severe emotional distress and mental suffering, all of which has caused, continues to cause, and will cause them great physical and mental pain and suffering, all to their damage.

12. Plaintiffs were reasonably required to and did incur incidental expenses related to the injuries described herein, and are informed and believe, and therefore allege, that they will in the future be reasonably required to incur similar obligations.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For general damages in the amount of at least \$250,000 each;
2. For special damages according to proof, but in no event less than \$50,000;
3. For attorney's fees and costs incurred as permitted by statute or law;
4. For such other and further relief as the Court considers proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial.

BRANTON & WILSON, APC

Dated: June 8, 2007

By: 

Stephen L. Waldman, Esq., Attorneys for
Plaintiffs OSCAR CADENA JUAREZ, a minor,
FELIX CADENA-URQUIDEZ, and MARIA
DEL RUBI JUAREZ-ALONSO

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS OSCAR CADENA-JUAREZ, a minor, by and through his Guardian Ad Litem, ESTELA GURROSQUIETA, FELIX CADENA-URQUIDEZ, and MARIA DEL RUBI JUAREZ-ALONSO

DEFENDANTS

UNITED STATES OF AMERICA

2007 JUN 11 PM 4:23
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Stephen L. Waldman, Esq.
BRANTON & WILSON, APC
701 B Street, Suite 1255
San Diego, CA 92101 (619) 236-1891

ATTORNEYS (IF KNOWN)

'07 CV 1063 W RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For Diversity Cases Only)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Medical malpractice and negligent infliction of emotional distress, under Federal Tort Claims Act, 28 U.S.C. Section 1346(b), 2671-80

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input checked="" type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury-Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 250,000

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE June 11, 2007

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 6/11/07 BH RCPH 139234

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should completed the form as follows:

I.(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place the "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.
(rev. 07/89)

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

139234 - BH

**June 11, 2007
16:32:13**

Civ Fil Non-Pris

USAO #: 07CV1063 CIV. FIL.

Judge.: THOMAS J WHELAN

Amount.: \$350.00 CK

Check#: BC# 18512

Total-> \$350.00

FROM: CADENA-JUAREZ ET AL V. U.S.A.
CIVIL FILING